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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,037	08/28/2002	Kenji Morimoto	MTS-3321US	6565
<div>7590      05/07/2007</div> <div>Allan Ratner Ratner &amp; Prestia Suite 301 One Westlake Berwyn P O Box 980 Valley Forge, PA 19482-0980</div>			<div>EXAMINER</div> <div>SHIBRU, HELEN</div>	
			<div>ART UNIT</div> <div>2621</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>05/07/2007</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/088,037

Applicant(s)

MORIMOTO ET AL.

Examiner

HELEN SHIBRU

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2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 9-21 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s)      is/are withdrawn from consideration.
- 5) ☐ Claim(s)      is/are allowed.
- 6) ☐ Claim(s)      is/are rejected.
- 7) ☐ Claim(s)      is/are objected to.
- 8) ☒ Claim(s) 1-5, 7, 9-21 and 23-26 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on      is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No.     .
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>    </u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                             | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>    </u> | 6) <input type="checkbox"/> Other: <u>    </u>   |

### **DETAILED ACTION**

1. The Office Action mailed on 12/27/2006 has been withdrawn because the preliminary amendment filed on 08/28/2002 was not considered. However restriction is required based on the preliminary amendment.

#### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, 7, 9-13, 16, 17, 18-21, 25, 26 are, drawn to a data recording apparatus comprising data rate detecting means of counting a number of input packets which are received by said inputting means, at intervals of a time corresponding to an integer multiple of a minimum record unit time, and controlling means of controlling a recording rate of said recording means by using the rate which is detected by said data rate detecting means, classified in class 386, subclass 112.
- II. Claims 14-16, 17, 23-24, 25 and 26 are, drawn to a data recording apparatus including the feature of controlling means of fixing a recording rate of said recording means to a predetermined rate in accordance with a broadcasting channel corresponding to the recording signal which is to be recorded by said recording means, classified in class 386, subclass 124.

3. The inventions are distinct, each from the other because of the following reasons:

Group I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the data recording

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apparatus as claimed in group I independent claims does not require the feature of “controlling means of fixing a recording rate of said recording means to a predetermined rate in accordance with a broadcasting channel corresponding to the recording signal which is to be recorded by said recording means” as claimed in group II independent claims. Similarly the data recording apparatus as claimed in group II independent claims does not require the feature of “data rate detecting means of counting a number of input packets which are received by said inputting means, at intervals of a time corresponding to an integer multiple of a minimum record unit time, and controlling means of controlling a recording rate of said recording means by using the rate which is detected by said data rate detecting means” as claimed in at least claim 1 or group I independent claims.

***Note that some of the dependent claims are included in both groups because they are multiple dependent claims.***

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

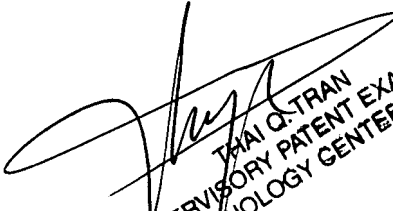
***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HELEN SHIBRU whose telephone number is (571) 272-7329. The examiner can normally be reached on M-F, 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI Q. TRAN can be reached on (571) 272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Helen Shibru  
May 2, 2007

  
THAI Q. TRAN  
SUPERVISORY PATENT EXAMINER  
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